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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICGTION

INCOME TAX REFERENCE NO. 736 of 1987

The Commissioner of Income Tax ... Applicant.

vs.

Shri G. N. Ghorpade, Ichalkaranji ..... Respondent

Mr. Ashok Kotangale, Sr. Counsel
with Mr. D. A. Dubey
i/b. K. C. Sidhwa for applicant.
Mr. Arun Sathe for Respondent.

CORAM: V**.C. DAGA AND A.S. AGUIAR JJ.**

Date: 19th July, 2005.

P. C.:

1. By this reference under section 256 (1) of the Income Tax Act , 1961, the Income Tax Appellate Tribunal Pune, in ITA No. 212/PN/81 for the Assessment Year 1971-72, has referred the following questions of law for the opinion of this court:

> "Whether on the facts and circumstances of the case, the Tribunal was justified in law in holding that capital gains of Rs.1,86,480/- arising from the acquisition of property R.S. 610. Ichalkaranji, is not

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liable to tax in the hands of the assessee although ownership of the property is shown in the 7/12 extract of the records of rights in the name of assessee and when the competent court under the Land Acquisition Act, decided the issue of ownership in favour of the assessee who himself has claimed the entire compensation during the acquisition proceedings?"

(The above question is slightly modified for the sake of clarity.)

2. When the appeal was heard by the Tribunal, the Tribunal had on its record the order passed by the Court of Assistant Judge, Kolhapur, in Land Reference Case nO.35 of 1976, arising out of section 30 of the Land Acquisition Act for the apportionment of the amount of compensation. As such Tribunal was expected to make the said order a part of the statement of the case while referring the matter for the opinion of this court. Since the said order was not forwarded by the Tribunal along with the statement of the case; the learned counsel for the assessee was called upon to produce the said order. Accordingly the xerox copy thereof is produced by the learned counsel for the assessee. The same is taken on record, for deciding

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this reference.

The facts:

3. The relevant facts giving rise to this reference are that the ITO calculated capital gains in the sum of Rs.1,86,480/- arising out of the portion of the property bearing R. S. no. 610, corresponding to City Survey No. 5963 situate at Ichalkaranji ; which was acquired by the State Government, under the provisions of Maharashtra Regional Town Planning Act, for the public purpose.

4. A Notification under section 126(4) of the Maharashtra Regional Town Planning Act for that purpose was published in the Official Gazette on 27.9.1973. After complying with requirements of MRTP Act, the Special Land Acquisition Officer, who was empowered with the functions of the Collector passed an award awarding compensation on 16.10.1976. Under this award, he determined a total amount of compensation in the sum of Rs.1,34,034/- including solatium and damages on account of severance etc. The Land Acquisition Officer during the course of his inquiry, could not resolve the conflicting claims of opponent nos. 1 and 2, i.e., dispute between son and mother; since mother (opponent no.2) Smt. Anubai V.

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Ghorpade, was claiming entire amount of compensation. Smt. Anubai was contending that the land acquired was given to her for her maintenance under will, and, as such under section 14 of the Hindu Succession Act, 1956, she became the absolute owner thereof. The Land Acquisition Officer finding himself unable to decide the issue of apportionment of the amount of compensation, made a Reference to the Civil Court under section 30 of the Land Acquisition Act, registered as Land Reference No. 35 of 1976. It came to be decided by the judgment and order dated 25th November 1980 which became final and conclusive for want of further challenge. The contention of the mother Smt. Anusayabai was upheld and she was held entitled to claim entire amount of compensation. In this view of the matter the contention of the assessee that the capital gain could not have been taxed in his hands or could not be assessed in his hand in the Assessment Year 1971-72 was rightly upheld by the Tribunal.

5. The assessee became the owner of the property in the year 1976, that too by virtue of the sale deed obtained by him from his mother Smt. Anubai. In the Assessment Year 1971-72 he was not the owner as such no capital gain could be taxed in his hands.

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6. In the above view of the matter, the Tribunal was perfectly justified in holding that the Respondent assessee was not liable to pay capital gains tax. The question referred is, thus, answered in the affirmative i.e., in favour of the assessee and against the Revenue.

Reference stands disposed of with no order as to costs.

(V. C. DAGA J.)

(A. S. AGUIAR J.)